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1 Is it proper to still call something a
2 retention bonus where it's paid if they're no
3 longer retained?

4 A. I really don't think the focus should be
5 on the possibility of termination of employment.
6 Indeed I would hazard a guess that when the parties
7 negotiated the arrangement they were simply trying
8 to come up with a phrase that described a bonus in
9 accordance with the terms of their understanding or
10 their intentions surrounding it.

11 Again, the bonus has two principal
12 purposes. There's a retention aspect to it and
13 there's an incentive emergence aspect to it.

14 Q. Was it initially described to you as
15 that dual purpose, or was it described to you as an
16 emergence bonus?

17 A. I don't remember.

18 Q. Despite the oddity of the bonus, it's
19 not something that stands out in your mind?

20 A. No.

21 Q. You said earlier as an aside to one of
22 my questions, or my question was an aside, that you

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April 3, 2005

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1 believe it's appropriate to annualize a bonus over
2 48 months.

3 A. Yes. -

4 Q. Can you explain that?

5 A. Sure. Under the terms of the contract,
6 again, assuming no emergence, in November 2007 and
7 November 2008 the retention bonus will be paid in
8 installments on those two dates, \$750,000 in
9 November of '07 and \$1 million in November '08. So
10 if you analyze it strictly as a retention bonus it
11 is designed to retain Mr. Festa's services through
12 those dates.

13 Now, the point at which he knew about
14 the potential payments and the time at which it
15 would begin to affect his behavior was when he
16 negotiated that provision. And that time was
17 essentially October, November, December 2004. So
18 without picking any particular date, but just
19 taking the midpoint, November '04, from November
20 '04 through November '08 is four years.

21 So I think it's appropriate to view the
22 retention bonus as covering those four years.

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1 Therefore you can think of it as a payment that's
2 earned for four years of service. Accordingly I
3 believe it's fairly appropriate to annualize it
4 over a four-year period.

5 Q. When does the contract become effective?

6 Are you aware of the effective date?

7 A. It becomes effective when Fred becomes
8 CEO, which is May of this year.

9 Q. Is that a seven or eight month gap
10 between October and May, or I believe it's June 1
11 in the agreement, that doesn't come into your
12 analysis as to how long you should annualize that
13 bonus over?

14 A. That would suggest annualizing it over a
15 42 month period. That's a reasonable approach. I
16 could be persuaded that that's okay. I just think
17 that the better analysis is to do it over a four-
18 year period.

19 Q. Would you normally annualize something
20 prior to its effective date?

21 A. As I suggested, the reason I'm doing it
22 here is because I think it has a behavior-affecting

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1 change beginning in November '04. But to answer
2 your question, yes, sometimes.

3 Q. You said it's a behavior-affecting
4 change.

5 (Telephone interruption)

6 MS. BAER: Excuse me.

7 BY MR. SAKALO:

8 Q. How is this agreement a behavior-
9 affecting change for Mr. Festa?

10 A. It seems to me that once he had
11 knowledge of the possibility that his contract
12 would include this dual purpose bonus it would
13 modify his behavior. For example, it seems to me
14 that he might decide in the interim between the
15 time it was negotiated and the contract was drafted
16 late 2004 until the time it's being signed that he
17 should turn down any competing job offers he has if
18 they were not as rich or as good as deal as the one
19 he had with Grace.

20 I think we'd all agree that if somebody
21 approach him and said, Fred, we'll give you an
22 aggregate pay package of \$2 million TDC, and you

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1 should take it because the Grace deal isn't a done
2 deal yet, yeah, that's not going to be signed or
3 approved until later in the year and it might not
4 be approved, so you ought to go with the bird in
5 the hand.

6 Now, it seems to me he could rightly
7 conclude, you know, I shouldn't do that, I think
8 the two in the bush are a better deal. One of
9 those in the bush is a retention bonus. So in that
10 respect he is relying upon it.

11 Q. But it's not a behavior-affecting change
12 with respect to his running the operations of the
13 company; it's a personal change to him?

14 A. I didn't suggest it had anything to do
15 with the operations of the company.

16 Q. Okay. So the reason for annualizing it
17 over 48 months, one of the reasons you said is it's
18 a behavior-affecting change. But that's as to Mr.
19 Festa, not as to the company.

20 A. That's correct.

21 Q. And I'm curious as to -- okay.

22 And you also just said in your example

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1 Is it your opinion that excluding the
2 emergence bonus or retention bonus, excluding the
3 \$1.75 million that the pay package that's proposed
4 to be paid to Mr. Festa is within the competitive
5 range that you've described, the median to the 75th
6 percentile?

7 A. I've answered that question already.

8 Q. Your answer is yes?

9 A. That's correct. Although I didn't say
10 it was between the median and the 75th percentile.

11 Q. Within the competitive range. I said it
12 was within the competitive range. Okay.

13 And it's your view, though, that because
14 these are asbestos debtors, as opposed to debtors
15 who are suffering operational difficulties, we
16 should look at these slightly different?

17 A. There is no doubt that the management of
18 these companies received richer pay packages than
19 those managers at company that are in Chapter 11
20 because of operational or financial difficulties.

21 Q. But we don't know how much because we
22 haven't had that analysis; you haven't conducted

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